IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.825 OF 2004

IN

SUIT NO. 735 OF 2004

...

Maurice F. Correa ...Plaintiff

v/s.

Dirk Allams and others ...Defendants

...

Mr.Aras i/b Aras & Co. for the Plaintiff.

Mr.Snehal Shah with Mr.Z. Jariwala i/b Jariwala & Associates for the Defendants.

...

CORAM: D.K.DESHMUKH, J.

DATED: 2nd December,2004

P.C.:

1. This Notice of Motion is taken out by the Plaintiff for appointment of court receiver on the property. The suit is for specific performance of the agreement dated 29th July, 1992.

2. Perusal of the agreement, however, shows that the agreement is not for sale of the property, but it is for development of the property. It is clear from clause 6 of the agreement that the Plaintiff is not even entitled to sale deed executed of the property in his favour. The sale-deed is to be executed in favour of the co.operative society. Therefore, the suit for specific performance of the agreement would not be maintainable at the instance of the Plaintiff. Because the Plaintiff is not entitled to the sale-deed of the property pursuant to the agreement. The Division Bench of this Court in the judgment in the Appeal No.285 of 1988 in the case of **Narayanan Pamchandra v/s. Mahabodhi Society of India & Ors.**, dated 7th March, 1988, has already taken a view that a suit for the decree of specific performance of the development agreement is not maintainable.

2. In this view of matter, therefore, and as the agreement of which specific performance is sought in this Notice of Motion is essentially a development agreement, it cannot be said that the Plaintiff has a prima facie case in his favour and therefore, the Plaintiff is not entitled to any interim relief.

3. Notice of Motion disposed of.

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